

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

MAILED

OCT 18 2006

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte: GLENN SMITH AND LETITIA LEE

Application No. 09/829,721

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on September 20, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

**APPEAL BRIEF**

**Summary Of Claimed Subject Matter**

Appellant filed an Appeal Brief dated October 23, 2006, in response to the Final Rejection mailed March 20, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c)(v), effective September 13, 2004.

The “Summary of Claimed Subject Matter” section appearing on page 2-4 of the Appeal Brief filed October 23, 2007, is deficient. Dependent claims 3, 7 and 15 contain “means for” language. An explanation of the claimed subject matter for each dependent claim argued

separately (claims 3, 7 and 15) must be included as well as mapping to the specification by page and line number.

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

### **CONCLUSION**

Accordingly, it is

**ORDERED** that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed October 23, 2006, defective;
- 2) notify the appellant to submit a "paper" which corrects the Appeal Brief, Summary of Claimed Subject Matter under 37 § 41.37(c)(1)(v);
- 3) acknowledge and consider of any "paper" that may be submitted by Appellant in response to the Notice of Non-Compliance to correct the Appeal Brief as required by 37 § 41.37(c)(1)(v); and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
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By:

*Patrick J. Nolan*  
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